

IOSHA Fines Notre Dame For Blatant Scissor Lift Disregard

SOUTH BEND, Ind. (AP) — The 20-year-old Notre Dame student who was killed when the hydraulic lift he was on fell over as he filmed the football team on a windy day had expressed displeasure about practice being held outside, according to a state report released Tuesday.

Declan Sullivan wasn't happy when he found out the team would be practicing outside last Oct. 27, assistant video coordinator Reuel Joaquin told an Indiana Occupational Health and Safety Administration investigator.

Sullivan's response was, "Aw man, this sucks," Joaquin told investigator Jerry Marquell.

Less than an hour earlier, Sullivan had tweeted his concerns about what he described as "terrifying" weather.

"Gusts of wind up to 60 mph today will be fun at work ... I guess I've lived long enough," he wrote.

Joaquin also told the investigator that he and video coordinator Tim Collins had decided not to put a female videographer on a lift until midway through practice because it wasn't necessary and "so we would not scare her."

The details were released as IOSHA fined Notre Dame \$77,500 for six safety violations tied to Sullivan's death, including knowingly putting its employees in an unsafe situation. The junior from Long Grove, Ill., was killed when the hydraulic lift toppled in gusts of up to 53 mph while he was filming football practice.

The Rev. John Jenkins, university president, said the school would study the IOSHA report and take necessary actions to protect students and staff. The school announced last week it was replacing the lifts with remote-controlled cameras.

"None of these findings can do anything to replace the loss of a young man with boundless energy and creativity. As I said last fall, we failed to keep him safe, and for that we remain profoundly sorry," Jenkins said in a prepared statement.

The school is conducting its own investigation.

The report includes dozens of pages, including interviews with other student videographers and Notre Dame officials. One document, written by a state investigator, describes the film Sullivan shot that day.

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"(T)he pants, shirts and jackets of the coaches are blowing and whipping in the wind," it says. "The goalposts in front of the camera are moving and the one red flag (on top) is extending straight outward."

The state said Notre Dame failed to maintain safe working conditions or heed National Weather Service warnings.

"The evidence overwhelmingly demonstrated that the university made a decision to utilize its scissor lifts in known adverse weather conditions," agency Commissioner Lori Torres said at a news conference in Indianapolis.

Torres said there was no indication that Sullivan expressed concern while up on the lift, which was extended 39 feet. Torres said two other student videographers were on the elevated lifts in different areas of the practice area when the incident happened.

Marquell wrote that another videographer had said Collins told him that Notre Dame would be practicing outside that day "contrary to his judgment." That videographer said Collins also told him to raise his lift "half way up" and to go no higher than the top of the goal posts.

Messages seeking comment from Collins were left Tuesday at his home and office by The Associated Press.

The so-called scissor lifts rented by the university were not supposed to be used in winds above 28 mph, but the weather service had issued a warning saying winds of 25 mph to 35 mph were expected with gusts of up to 45 mph.

The university was at fault for allowing Sullivan to be in the lift after the weather service had issued the advisory, Torres said.

Collins told the investigator that no one advised him not to use the lifts that day. Collins told him he had monitored weather service reports that said winds were in the mid-20s with gusts between 29 mph and 31 mph.

The IOSHA report did not identify who was responsible for making the decision to allow student videographers to go up in the lifts that day. Torres said IOSHA typically doesn't include that in its reports.

Torres and Deputy Labor Commissioner Jeff Carter both said they didn't know whose decision that was. Carter said the IOSHA investigation focused on whether Notre Dame was at fault, not who at Notre Dame was at fault.

"The decision to play outdoors was the coaches — whether they were going to practice inside or outside, I think that was the coaches," Carter said.

Coach Brian Kelly told Marquell he decides whether to practice outside, relying "on information from my support staff."

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The school has until April 7 to accept the findings and pay the fines, contest the safety orders or meet with the agency.

John Affleck-Graves, the university executive vice president who is leading the investigation, said the state findings will help the school complete its investigation, saying it should be finalized in four to six weeks. He said university officials hope to meet with IOSHA officials in the next two weeks.

Sullivan's parents, Barry and Alison, issued a statement saying they appreciated the thorough investigation. They said they are confident Notre Dame "will address the additional issues raised in the IOSHA report."

"This report is an important step in preventing future accidents, but its findings do not change the fact that Declan is not with us," they wrote.

Sullivan's uncle, Mike Miley, said the report hadn't changed the family's opinion, saying they hope others will learn from Sullivan's death and take appropriate safety steps in the future. He said he hasn't heard the family talk about a possible lawsuit.

"The focus is on finding ways other organizations can learn from it. I think things might have been different if the university hadn't been publicly showing that they are taking steps to make their environment better," Miley said.

The other violations cited by IOSHA included a failure to make annual, monthly or weekly inspections of the lifts for more than a year; a failure to have the scissor lift serviced as required by the manufacturer; and a failure to have an operator's manual on the unit. The lift was also missing some warning labels while others were faded and weathered.

Torres said the investigation ruled out mechanical failure.

She said the Department of Labor will launch an educational initiative on the use of hydraulic lifts, saying many universities and high schools use the devices to film football practices, for band practice and for theatrical productions. She said a copy of the letter will be sent to NCAA offices in Indianapolis.

Associated Press writer Hasan Dudar in Indianapolis contributed to this report.

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